Ontario

SECTION:	Wind Up
INDEX NO.:	W100-442
TITLE:	Restrictions on Payments on wind up where there is a Deficit - PBA ss. 42, 70, 75 and 84 - Regulation 909 ss. 29(7) and 29(8)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	W100-441

This policy replaces W100-441 (Restrictions on Payments in Deficit Situations) as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fsco.gov.on.ca. *All pension policies can be accessed from the* **Pensions** *section of the website through the* **Pension Policies** *link.*

The purpose of this policy is to address the question as to whether an administrator of a pension plan may transfer the commuted value or purchase a life annuity for members, former members, retired members and other persons entitled to benefits under the plan, when the plan that is being wound up in whole or in part, has a wind up deficit that requires the employer to pay into the pension fund the amounts required under section 75 of the PBA.

The answer depends on whether all the pensions and other benefits being funded under section 75 would be guaranteed by the Pension Benefits Guarantee Fund (PBGF) under section 84 of the PBA.

Please note that the PBA was amended on July 1, 2012 to eliminate any partial wind up where the effective date of the partial wind up is on or after July 1, 2012. A plan may still be wound up in part if the effective date of the partial wind up is prior to July 1, 2012. Where a plan is wound up in part, certain sections of the PBA and Regulation as they relate to a full wind up of the plan apply, with necessary modifications, to the partial wind up of a plan.

Where a plan is winding up in whole or in part, sections 70(2) and (3) of the PBA impose restrictions on payments that may be made out of the pension fund. Section 70(2) prohibits any payments from the pension fund until the Superintendent of Financial Services (Superintendent) has approved the wind up report. However, section 70(3) states that this prohibition does not prevent the continued payment of a pension or other benefit if the payment commenced before the administrator gave notice of the intended wind up, and it does not prevent any other payment that is prescribed or approved by the Superintendent.

In certain circumstances, the Regulation permits the plan administrator to pay certain payments after the wind up report has been approved by the Superintendent and before the completion of the required funding under section 75 of the PBA.

Specifically, where the Superintendent has not made an order under section 83(1) of the PBA that the Pension Benefits Guarantee Fund (PBGF) applies in respect of the plan and all the benefits being funded under section 75 of the PBA would be guaranteed under the PBGF, section 29(7) of the Regulation permits the administrator to pay:

- the accumulated value of any additional voluntary contributions;
- the accumulated value of required contributions made by a member or former member; and
- the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of the wind up to the extent that such benefits have been funded (after appropriate adjustments for any payment made in respect of the accumulated value of required contributions made by a member or former member).

However, if any benefits being funded under section 75 of the PBA would not be guaranteed under the PBGF, section 29(8) of the Regulation prohibits the payment of certain amounts from the plan, until a report is filed under section 32 of the Regulation certifying that there is no further amount to be funded. Specifically, section 29(8) prohibits the purchase of a life annuity for any person entitled to a life annuity and, where an election is made under section 42(1)(a) of the PBA (requiring the administrator to pay the commuted value of the deferred pension to the pension fund related to another pension plan) or under section 42(1)(b) of the PBA (requiring the administrator to pay the commuted value of the deferred pension into a prescribed retirement savings arrangement), the maximum portion of the commuted value of the deferred pension that may be transferred is the amount, if any, of the contributions the employee was required to make under the plan plus any additional voluntary contributions made by the employee.